

# CONDITIONS OF SALE.

## GENERAL

- (a) These conditions shall form part of every contract of sale entered into by Acoustofoam Limited ("the Company") which will operate to the entire exclusion of any terms and conditions of any buyer and any purported variation or exclusion of these conditions whether contained in any document of the buyer or otherwise shall be of no effect unless accepted in writing by the Company.
- (b) Any order whether or not based upon a quotation shall not be binding on the Company unless it is made by the buyer in writing and accepted by the Company in writing.
- (c) Any representations or warranties made or given by anyone on the Company's behalf prior to acceptance of any order and not confirmed in writing by the Company are hereby expressly excluded.
- (d) Unless otherwise stated by the Company in writing all quotations submitted by the Company are valid for 30 days.

## 1. SPECIFICATION

All goods supplied are subject to availability and the Company reserves the right at any time without prior notification to change the contents, specification, design and packaging of the goods.

## 2. PRICES

- (a) The price of the goods shall be the Company's quoted price.
- (b) Unless otherwise stated by the Company in writing all prices quoted by the Company are ex-warehouse. Carriage and insurance charges shall be payable by the buyer.
- (c) The price shall be exclusive of any applicable value added tax which the buyer shall be additionally liable to pay to the Company.
- (d) Where an order is placed and accepted for goods differing in size, quality or in any way from the goods specified in the Company's quotation or where the buyer requests alterations or modifications to the goods during the course of their manufacture or requests changes to the quoted delivery times then an additional charge may be made.
- (e) Unless the prices quoted by the Company are specifically stated as fixed, prices shall be subject to increase without notice to reflect any increase in the cost of labour and/or materials required in connection with the goods between the date the order is accepted and the date the goods are despatched. For the purpose of this condition the cost of materials shall include any increase in existing duties or taxes or the imposition of any novel duties or taxes payable in respect of the importation, purchase, sale, processing or use of such materials.

## 3. PAYMENT

- (a) Unless otherwise stated in writing by the Company, payment for goods supplied within the United Kingdom and Eire shall be made by the end of the month following the month of delivery or from the month when the Company notifies the buyer that the goods are ready for delivery and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in goods has not passed to the buyer.

The time for payment of the price shall be of the essence of the contract. Receipts for payments will be issued only upon request.

- (b) Unless otherwise stated in writing by the Company payment for goods outside the United Kingdom shall be made by irrevocable letter of credit deposited with a bank approved by the Company upon presentation of shipping documents or if the Company is unable by reason of the buyer's instruction or lack of instruction to ship the goods when ready upon notification to the buyer that the goods are ready for shipment.
- (c) Without prejudice to any other rights of the Company if payments are not made within the stipulated period then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - (i) cancel the contract or suspend any further deliveries to the buyer;
  - (ii) appropriate any payment made by the buyer to such of the goods (or the goods supplied under any other contract between the buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the buyer); and
  - (iii) charge the buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4% above the base lending rate of National Westminster Bank PLC until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- (d) The buyer will pay the agreed net price of the goods without any deduction, set-off or abatement on any grounds.

## 4. DELIVERY

- (a) Delivery of the goods shall be made by the buyer collecting the goods at the Company's premises at any time after the Company has notified the buyer that the goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the goods to that place.
- (b) Delivery dates are estimated only and not guaranteed and the time for delivery shall not be of the essence of the contract. The Company will endeavour to meet the buyer's delivery requirements but shall not be liable for any loss or damage whether direct consequential or otherwise caused by any delay in delivery.
- (c) The Company shall have no liability in respect of goods lost or damaged in transit if it has agreed to deliver the goods unless the buyer or its agents notes such loss or damage on the delivery receipt and gives notice thereof in writing to the Company and the carrier within seven days of receipt or such shorter period as may be required by the carrier's conditions of carriage or in the case of a whole consignment failing to arrive gives notice thereof in writing to the Company within seven days of receipt of the Company's invoice or despatch note.
- (d) The Company's liability in respect of goods lost or damaged in transit shall be limited at its option to replacing or repairing such goods within a reasonable time.
- (e) Upon the Company's notifying the buyer that the goods are ready for delivery the buyer shall agree to accept delivery of the goods forthwith. If the buyer shall fail to give proper delivery instructions or to accept as aforesaid the buyer shall be liable for all costs incurred by the Company as a result of such failure (including without limitation all costs of storage, insurance and demurrage) which costs shall become immediately due and payable on demand but such liability shall not affect the buyer's obligation to purchase the goods or the right of the Company to damages for breach of such obligation.
- (f) Unless otherwise stated in writing by the Company, orders against which deliveries are to be made over a period of time in accordance with a schedule are accepted on the condition that a schedule received by the Company shall be a firm order for the goods shown therein.
- (g) The Company shall be entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply. Failure by the Company to

deliver any one or more instalments in accordance with these conditions or any claim by the buyer in respect of one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.

- (h) The buyer shall take delivery of the goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that such discrepancy in quantity shall not exceed ten per cent and the price shall be adjusted pro rata to the discrepancy.
- (i) Where goods are to be delivered by instalments each part delivery of any order shall constitute a separate contract.
- (j) The goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the buyer.

## 5. RISK AND TITLE

- (a) Risk of damage to or loss of the goods shall pass to the buyer:
  - (i) in the case of goods to be delivered at the Company's premises, at the time when the Company notifies the buyer that the goods are available for collection;
  - (ii) in the case of goods to be delivered otherwise than at the Company's premises, at the time of delivery or if the buyer wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods.
- (b) Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the buyer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the buyer for which payment is then due.
- (c) Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as the Company's fiduciary and bailee and shall keep the goods separate from those of the buyer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the goods in the ordinary course of its business but so this entitlement shall cease automatically without notice in the event of the Buyer committing any act of insolvency including but not limited to being adjudicated bankrupt, being placed in administration, having an administrative receiver appointed of all or part of its undertaking or in the event of notices being served, meetings called for a creditors meeting of the Buyer or proceedings issued which could lead to the winding up of the Buyer.
- (d) Until such time as the property in the goods passes to the buyer (and provided the goods are still in existence and have not been resold), the Company shall be entitled at any time to require the buyer to deliver up the goods to the Company and, if the buyer fails to do so forthwith, to enter any premises of the Company or any third party where the goods are stored and repossess the goods in which event the buyer will be responsible for all associated costs and expenses.
- (e) The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company but if the buyer does so all monies owing by the buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## 6. WARRANTY AND LIABILITY

- (a) The Company warrants that subject as hereinafter provided the goods will at the time of delivery correspond with the Company's specification or with the buyer's specification which has been accepted by the Company in writing and will be free from defects in design, materials and workmanship for a period of six calendar months from the date of delivery.
- (b) The Company shall have no liability under the above warranty unless:
  - (i) immediate written notification of any claim thereunder is given to the Company, no further work or treatment is undertaken on them and all goods which are the subject of the claim are returned to the Company carriage paid within one month of the defect becoming apparent and in any event within 7 months from delivery (or if the return of the goods is not practicable the goods are made available for examination by the Company);
  - (ii) the Company's examination of such goods shall disclose to the Company's reasonable satisfaction that any defect or failure under the above warranty has not been caused by misuse, neglect, improper installation, unauthorised repair, alteration, fair wear and tear, abnormal working conditions, accident, further treatment or process or any combination of the goods by the buyer with non-compatible goods.
- (c) The above warranty is given by the Company subject to the following conditions:-
  - (i) The Company shall be under no liability in respect of any defect in the goods or failure to correspond with the requisite specification arising from any drawing, design, specification or instruction supplied by the buyer;
  - (ii) The Company shall be under no liability if the total price for the goods has not been paid by the due date for payment.
- (d) The Company's liability under the above warranty shall be limited to, at its option, supplying free of charge ex works such repaired or replacement goods (or the part in question) or refunding the purchase price for any goods not conforming to such warranty and to reimbursing the buyer with the cost of returning such goods to the Company and the Company shall have no further liability to the buyer in respect of such goods.
- (e) The above warranty shall not apply to component parts or accessories not manufactured by the Company but the Company shall pass to the buyer the benefit of any manufacturer's guarantee in respect of such parts or accessories insofar as such guarantees are assignable without expense to the Company.
- (f) Any defect in the goods (once accepted by the Company) which does not affect the whole of a consignment of the goods or make the substantial performance of the contract impossible shall not entitle the buyer to withhold or delay payment for that part of the contract which has been delivered and found to be satisfactory.
- (g) Where the Company has given the buyer technical advice about its goods and their possible application to the buyer's business the Company accepts no responsibility whatsoever for any deficiencies in the performance of its goods where the buyer used them either in applications not known to or recommended by the Company or for any applications outside the scope of any technical advice given by the Company.
- (h) Subject as expressly provided in these conditions and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all conditions, warranties or other undertakings concerned with the condition, quality or merchantability of the goods, their fitness for any purpose or correspondence with any description or sample, whether express or implied by statute, common law, custom, usage or otherwise, are excluded to the fullest extent permitted by law. Without prejudice to the foregoing the buyer shall satisfy itself that the goods are suitable for the purpose for which it is intended to use them.
- (i) Where the goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the buyer are not affected by these conditions.
- (j) The Company will be responsible for:-

- (i) the bodily injury or death of any person to the extent that such bodily injury or death is directly caused by its negligence or by the negligence of any person for whose acts it is responsible;
- (ii) loss of or damage to property to the extent that such loss or damage is directly caused by its negligence or the negligence of any person for whose acts it is responsible provided that its liability in respect of loss or damage to the buyer's property shall be limited to the lower of the direct costs of replacement or repair of such property or the sum of £1,000,000 for each incident or series of incidents arising out of the one event.
- (k) Save as provided in clauses 7(i) and (j), in no circumstances shall the Company be liable to the buyer whether in tort (including but not limited to negligence or breach of statutory duty), contract or otherwise for any loss of use, loss of profits, business or contract or any type of special, indirect or consequential loss or damage arising under or in connection with the contract even if the Company had been advised of the possibility of such consequential loss or damage. Except as expressly provided in these conditions the entire liability of the Company under or in connection with the contract shall not exceed the price of the goods.

#### 7. SAFETY

The Company may supply goods which require special handling techniques to trade customers who are presumed to know any possible risks involved and to draw the attention of their employees and all others handling the goods to the risks and the need to handle the goods appropriately. The buyer shall indemnify the Company against any liability it might incur to persons (whether the buyer's employees or others) handling the goods or to users of products incorporating the goods under the provisions of the Consumer Protection Act 1987.

#### 8. MATERIALS SUPPLIED BY BUYER

- (a) Where by agreement with the Company the buyer supplies materials free of charge for the Company to use in its manufacturing process or for incorporation within the goods then:-
- (i) the Company shall not be liable for any reasonable scrap or shortage arising out of the use of that material;
- (ii) The warranty given in condition 7 hereof shall not apply to such materials nor to the extent that such materials adversely affect the goods supplied by the Company.
- (iii) Such materials shall be of satisfactory quality and fit for the Company's purpose.
- (b) If the Company has any materials or products of the buyer in its possession for processing or other treatment it may exercise a general lien on them in respect of any sums due from the buyer to the Company.

#### 9. INDUSTRIAL PROPERTY

- (a) All estimates, designs, drawings, plans or models prepared by the Company for the buyer's information or in connection with the contract remain the property of the Company and are copyright and shall be returned to the Company on its demand. The buyer expressly agrees to keep such documents confidential and not to copy the same nor to supply the same to any third party for any purpose whatsoever nor to use the same except for the purpose of contracts placed by the buyer with the Company from time to time.
- (b) The buyer shall indemnify the Company against all damages, claims, demands and expenses to which the Company may become liable or may incur as a result of goods supplied or work done in accordance with the specifications or instructions of the buyer which involve the alleged or actual infringement of any copyright, letters patent, registered design or trademark.

#### 10. INSOLVENCY OF BUYER

- (a) This clause applies if:-
- (i) the buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the buyer; or
- (iii) the buyer ceases, or threatens to cease, to carry on business; or
- (iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.
- (b) If this clause applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the buyer, and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

#### 11. BUYER'S ASSURANCE

The buyer shall not without the written consent of the Company:-

- (i) make any representation or give any warranty in the name of the Company relating to the Company's goods or
- (ii) sell the Company's goods in the name of the Company or
- (iii) hold itself out as the agent of the Company for any purpose.

#### 12. SAMPLES

Where either party sends samples to the other party for any purpose the receiving party will return the samples at its own cost on request by the other party provided that such request is notified on or before the time of delivery. In the absence of any such request either party shall have the right to scrap samples after a reasonable period. Notwithstanding the foregoing the contract shall not be a contract for sale by sample.

#### 13. FORCE MAJEURE

Neither the Company nor the buyer shall be liable to the other or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the goods, if the delay or failure shall be beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the buyer or the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

#### 14. GENERAL

- (a) Any notice shall be in writing and shall be served by sending the same by pre-paid first class post or fax to the registered office for the time being of a company or to the last known principal place of business of an individual or firm and if sent by pre-paid first class post it shall be deemed to have been served 48 hours after the time it was posted and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted and if sent by fax to the recipient's fax it shall be deemed to have been served when the sender receives confirmation of receipt.

- (b) No waiver by the Company of any breach of the contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

- (c) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

- (d) The headings are inserted for convenience only and shall not affect the construction or interpretation of these conditions.

#### 15. LAW

The contract shall be governed by and construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English Courts. In the event that the Company issues proceedings against the buyer under the contract in any County Court (as defined under the County Courts Act 1984), the buyer agrees to submit to the jurisdiction of the particular County Court in which such proceedings are issued.

#### 16. TOLERANCES

Unless otherwise specified by us our tolerances our standard tolerances are;

ACOUSTAFOAM STANDARD DIMENSIONAL TOLERANCES				
NON-DIMENSIONAL (mm)				
SURFACE DIMENSIONS	4 – 100	100 – 300	300 – 1000	1000 +
FOAM	+/- 2.0	+/- 4.0	+/- 6.0	+/- 8.0
LAMINATED PRODUCTS	+/- 1.5	+/- 2.5	+/- 4.0	+/- 5.0
PU MOULDINGS	+/- 0.75	+/- 1.5	+/- 2.0	+/- 3.0
PU OPEN MOULD	+/- 1.0	+/- 1.0	+ 2.0 / - 1.0	+ 3.0 / - 1.0
	+/- 0.5	+/- 0.5	+ 1.0 / - 0.5	+ 1.5 / - 0.5
FOAM THICKNESS TOLERANCE	3 – 12	12 – 50	50 +	
	+/- 1.0	+ 2.0 / - 1.0	+ 3.0 / - 1.0	

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